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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1081 OF 1988

Sada @ Sadanand Tukaram Chorge)
Age 30 years, Resident of Walshet)
Taluka, Rohe, District Raigad.) ... Appellant

(Orig. Accused)

Versus

The State of Maharashtra.) ... Respondents

Mr. Ranjitsingh R. Bhosale with Mrs. Sujata Mogre with
Mr. Kiran V. Gupte for the appellant.

Dr. F.R. Shaikh, Addl. P.P. for the State.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 22ND SEPTEMBER, 2004.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The appellant along with three others (original accused 1 to 4 respectively) was tried in the Sessions Court at Raigad at Alibag in Sessions Case No.90 of 1988 for offences punishable under sections 498A and 302 read with section 34 of the Indian Penal Code (for short, "the IPC").

2. By judgment and order dated 21/11/1988, the learned Sessions Judge acquitted accused 2 to 4 of all the offences. He, however, convicted accused 1 for the offences under sections 302 and 498A of the IPC. Accused 1 was sentenced to suffer imprisonment for life for offence under section 302 of the IPC. No separate sentence was awarded for offence under section 498A of

the IPC. Being aggrieved by this judgment and order, accused 1 has preferred this appeal.

3. At the trial, the case of the prosecution was as follows. Deceased Sarika Sada Chorge was the wife of accused 1. Accused 2 is the father of accused 1. Accused 3 is the brother of accused 1. Accused 4 is the mother of accused 1. It is the case of the prosecution that the deceased was married to accused 1 for about six years. However, she could not conceive. Therefore, the accused used to ill-treat the deceased. PW-4 Anandibai Tadkar, the mother of the deceased has stated that accused 1 used to tell the deceased to go away because he wanted to marry another woman as the deceased could not conceive. On the day of the incident i.e. 9/12/1987, PW-4 Anandibai Tadkar was sleeping in her house. Her brother came to inform her that her daughter Sarika was burnt. She, therefore, went to the house of the deceased. She saw accused 1 there. She then called the rickshaw of PW-3 Ashok Patil, who was the police patil and nephew of accused 1. The deceased was put in the rickshaw and taken to the primary health centre, Nagothane. According to PW-4 Anandibai Tadkar, the deceased told her in the rickshaw that accused 1 had poured kerosene on her person and burnt her, as she could not conceive. It is the prosecution case that at the primary health centre, PW-5 Dr. Prakash Patil got her dying declaration recorded, which is Ex-17 in which she has stated that her husband poured kerosene on her body

and set her on fire because, she could not conceive. PW-9 P.S.I. Madhukar Nalavade has stated that this dying declaration was recorded at 7.30 a.m. As the condition of the deceased was deteriorating, the relatives of the deceased shifted her to Civil Hospital, Alibag. At the Civil Hospital, PW-7 Dhanraj Netare recorded the dying declaration of the deceased, which is Ex-23. It was signed by one Dr. Dhabalia, who had treated the deceased at the Civil Hospital, Alibag. However, Dr. Dhabalia has not been examined. In this dying declaration also, the deceased stated that accused 1 set her on fire after pouring kerosene on her body, because she could not conceive. Thereafter, at about 11.30 a.m., PW-2 Ramesh Nagawekar, Nayab Tahsildar of Alibag, recorded the dying declaration of the deceased, which is at Ex-12. The deceased repeated the same story that accused 1 set her on fire after pouring kerosene on her body, because she could not conceive. On 14/12/1987, the deceased succumbed to her burn injuries. The police registered an offence under sections 498A and 302 of the IPC. Investigation was started. Post-mortem was conducted on the corpse of the deceased. The deceased had suffered 99% burn injuries. The cause of death was given as death due to septicemia with 99% burns. The accused came to be arrested. After completion of the investigation, the accused came to be charged as aforesaid.

4. In support of its case, the prosecution examined as many as nine witnesses. The prosecution relied upon

three dying declarations, which are in writing. The prosecution also relied upon the oral dying declarations made by the deceased. The defence of the accused was one of denial. According to the accused, the death of the deceased was either accidental or suicidal. According to accused 1, when he came to know that the deceased was burnt, he tried to extinguish the fire and also called the neighbours. He also received injuries to his legs. After perusing the evidence on record, the trial court came to the conclusion that the prosecution has failed to prove its case against accused 2 to 4. The trial court, however, found that the prosecution has made out its case against accused 1 and, hence, he was convicted as aforesaid. Accused 1 has, therefore, preferred this appeal.

5. We have heard, at considerable length, the learned counsel appearing for the parties. Mr. Bhosale, the learned counsel appearing for the accused contended that the trial court erred in relying on the three dying declarations. He submitted that the medical papers of Civil Hospital, Alibag, which are on record, clearly establish that the deceased was not in a position to make any dying declaration. Her physical condition, right from the beginning, was so bad, that, it is inconceivable that she could have made any dying declaration. He submitted that so far as the oral dying declarations made to PW-3 Ashok Patil, PW-4 Anandibai Tadkar and PW-8 Suresh Tadkar, are concerned, there are discrepancies

and, therefore, the oral declarations must be discarded. So far as the dying declaration recorded by PW-5 Dr. Prakash Patil is concerned, the scribe, who had recorded the dying declaration has not been examined. PW-5 Dr. Prakash Patil has stated that he has not examined the deceased. He has stated that he had given calmpose injection to the deceased. Therefore, this dying declaration is doubtful. The learned counsel then urged that so far as Ex-23, dying declaration recorded by PW-9 PSI Madhukar Nalavade is concerned, that also cannot be relied upon. Dr. Dhabalia, who has signed the dying declaration (Ex-23) has not been examined though the witness summons was issued to Dr. Dhabalia and, in fact, Dr. Dhabalia has produced the medical papers of the deceased in the court. Besides, the condition of the deceased at 9.00 a.m. to 9.30 a.m. as per the medical papers was bad. According to the learned counsel, therefore, this dying declaration must also be discarded. He further contended that even the dying declaration recorded by PW-2 Ramesh Nagawekar (Ex-12) must be discarded in view of the medical papers of the Civil Hospital, Alibag, which show that on 9/12/1987, at 10.00 a.m. the deceased was admitted in the hospital. She was semi-conscious. Her pulse was very feeble. Her blood pressure was not recordable. It would, therefore, be improbable that at 11.30 a.m. she could have given the dying declaration. The learned counsel, therefore, submitted that the order of conviction and sentence must, therefore, be quashed and set aside. In support of his

submissions the learned counsel relied upon judgments of the Supreme Court to which we shall advert in due course.

6. The learned Addl.P.P., on the other hand, contended that all the three dying declarations inspire confidence and conviction can be based on these three dying declarations. He submitted that it is clear from the evidence of PW-4 Anandibai Tadkar that the deceased was being harassed by her in-laws because she could not conceive. In all the three dying declarations, the consistent story which the deceased had given is that accused 1 poured kerosene on her body and set her on fire because she could not conceive. The learned Addl.P.P. contended that there is no inconsistency in the dying declarations. He submitted that PW-5 Dr. Prakash Patil is an independent witness, who has stated that at the time when Ex-17 was recorded, the deceased was in a fit condition and could speak. There was no reason for PW-5 Dr. Prakash Patil to falsely implicate the accused. Similarly, there was no reason for PW-2 Ramesh Nagawekar, Special Executive Magistrate, to falsely implicate the accused. These dying declarations are also corroborated by the evidence of PW-3 Ashok Patil, PW-4 Anandibai Tadkar and PW-8 Suresh Tadkar, who have stated that the deceased told them immediately after the incident that it is accused 1 who had poured kerosene on her and set her on fire. The learned Addl.P.P. laid stress on the decision of the Supreme Court in **Laxman v. State of Maharashtra, (2002) 6 SCC 710** and contended that if the

present case is examined in the light of the ratio of **Laxman's case (supra)**, the order of conviction and sentence cannot be interfered with.

7. We have given our anxious consideration to the submissions advanced by both sides. In this case, since there are no eye-witnesses, the prosecution has relied upon three dying declarations and the evidence of PW-4 Anandibai Tadkar, PW-3 Ashok Patil and PW-8 Suresh Tadkar to prove its case that the deceased made dying declarations implicating accused 1. Therefore, it is necessary to see how far these dying declarations can be relied upon i.e. whether they are truthful and whether they inspire confidence. Several judgments have been cited by the learned counsel but before we begin to deal with the rival contentions, it would be useful to refer to **Laxman's case (supra)** where the Constitution Bench has considered the type of proof required for dying declarations. In that case, the court was concerned with two judgments of the Supreme Court where there was a divergence of views on the proof of dying declarations. In **Paparambaka Rasamma v. State of A.P., (1999) 7 SCC 695**, there was no medical certificate that the injured was in a fit state of mind at the time of making the declaration. The doctor had, however, stated that the injured was conscious. The Supreme Court took a view that in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept

the subjective satisfaction of a Magistrate that the injured was in a fit state of mind at the time of making the declaration.

8. In **Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562**, the Supreme Court held that since the materials on record in that case indicated that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded could not be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. After considering the relevant judgments on the point, in **Laxman's case(supra)**, the Supreme Court resolved the conflict and held that the enunciation of law made by the Supreme Court in **Paparambaka Rosamma's case (supra)** has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view. The Supreme Court then laid down what should be the nature of proof required or how a dying declaration's evidentiary value can be assessed. We may, quote the relevant paragraph:

> "3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful

consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state

that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily

depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

9. It is true that a certification of doctor that the deceased was in a fit condition may not always be necessary and the presence of a Magistrate may also not be necessary. Consistent eye-witnesses' evidence will prevail over medical evidence as regards fitness of the deceased to make a statement. But for this, the eye-witnesses' account has to be above board and other evidence must be of sterling quality. There are two circumstances in this case which make us feel that the prosecution has not come out with the true story. Firstly, the medical papers pertaining to the deceased make us sceptical about her capacity to make a dying declaration. Secondly, the earliest history given by

either the deceased herself or her mother or brother, who had admittedly taken her to the hospital, that she had poured kerosene on herself and burnt herself, makes the prosecution story doubtful. We shall deal with the submissions of the learned counsel in the light of the above observations of the Supreme Court.

10. We may first go to the oral dying declarations, which are first in point of time. PW-3 Ashok Patil is the police patil of Village Walshet. He is a rickshaw driver. According to PW-3 Ashok Patil, PW-8 Suresh Tadkar, who is the cousin of the deceased, came to his house on 9/12/1987 in the morning and informed him that the deceased was burnt. He told him to come with his rickshaw. Accordingly, he went to the house of the deceased with his rickshaw. The deceased was taken to the Primary Health Centre at Nagothane in his rickshaw. He has stated in his evidence that he first went to the police station. On the way, Police Sub Inspector met him. He accompanied the Police Sub Inspector to the hospital. At the hospital, the deceased said that her husband had burnt her after pouring kerosene on her person. He has further stated that in the Alibag General Hospital, she was crying and telling that she was burnt by her husband but in the cross-examination, this witness has categorically stated that he did not hear anything uttered by the deceased while she was in the rickshaw. Admittedly, the deceased was accompanied by her mother and her brother. PW-4 Anandibai

Tadkar has stated in her evidence that on the day of the incident, her brother came to her and informed her that her daughter was burnt. Therefore, she went there. She called rickshaw of PW-3 Ashok Patil. According to this witness, the deceased was put in the rickshaw of PW-3 Ashok Patil. While she was being taken to the hospital, the deceased told her in the rickshaw that her husband had poured kerosene on her person and set her on fire because she could not conceive. In the cross-examination, however, she has stated that the deceased did not tell anything to her in the rickshaw. PW-8 Suresh Tadkar, the cousin of the deceased has stated that on 9/12/1987 at about 6.00 a.m. in the morning the maternal uncle of the deceased came to him and told him about the incident. He went to the house of the deceased. At that time, the neighbours were trying to extinguish the fire of the deceased. He then went to PW-3 Ashok Patil and in his rickshaw the deceased was taken to the dispensary. He has stated that he was sitting at the back of the rickshaw. He asked the deceased about the incident and the deceased told him that because she could not get a child, she was set on fire after pouring kerosene on her body by accused 1. This is contrary to what PW-3 Ashok Patil and PW-4 Anandibai Tadkar have stated.

11. It is significant to note that whereas PW-3 Ashok Patil has said that he did not hear anything being uttered by the deceased in the rickshaw, PW-4 Anandibai

Tadkar has, at one stage, stated that the deceased told her that her husband poured kerosene on the person of the deceased and set her on fire. In the cross-examination, however, she has stated that the deceased did not tell anything to her in the rickshaw. This discrepancy creates doubt as to whether in fact the deceased said anything at home or in the rickshaw. These discrepancies appear glaring if they are read with the medical papers.

12. The medical papers to which the learned judge has also made reference persuade us to hold that the deceased could not have been in a position to make any such statement. Admittedly, the deceased was brought to the hospital by her mother and cousin. The medical papers of Civil Hospital, Alibag, show that the deceased was admitted in the hospital at 10.10 a.m. There is an endorsement signed by PW-8 Suresh Tadkar to the effect that he was informed that his sister's condition was serious. The history is given as "suicidal tendency, kerosine spread on her body by spreading herself". It is also stated that the deceased had received 99% burns. In our opinion, this history given by the members of the deceased's family creates doubt about the truthfulness of the prosecution story that accused 1 poured kerosene on the body of the deceased and set her on fire. So far as the condition of the deceased is concerned, in the medical papers, it is stated that at 10.10 a.m. on 9/12/1987, her general condition was very low. She was afebrile, her pulse was very feeble, her blood pressure

could not be recorded and she was semi-conscious. There is an endorsement on the case papers made at about 11.10 a.m. that the police should be informed for dying declarations, statements, immediately. There is however, no reference to the dying declaration on which Dr. Dhabalia has himself signed, which is Ex-23. With this state of medical evidence and the type of history given by the members of the family of the deceased, we find it difficult to accept the prosecution story that the deceased made any statement to her mother or cousin or anyone that accused 1 had poured kerosene on her person and set her on fire. It casts a serious doubt on the evidence of PW-4 Anandibai Tadkar, PW-3 Ashok Patil and PW-8 Suresh Tadkar that the deceased told them that accused 1 had poured kerosene on her person and set her on fire. Admittedly PW-4 Anandibai Tadkar and PW-8 Suresh Tadkar had taken her to the hospital. If she had made such a dying declaration to them, then there was no reason for them to give the history of "suicidal tendency and kerosine spread on her body by spreading herself". We are, therefore, unable to accept the oral dying declarations.

13. PW-5 Dr. Prakash Patil was on duty at the Primary Health Centre at Nagothane. It appears that the deceased was admitted at the Primary Health Centre in the early hours of 9/12/1987. Dr. Prakash Patil has stated that the deceased had 99% deep burns. When she was brought to the hospital, she was shouting. He recorded her dying

declaration (Ex-17), which bears her thump impression. The thump impression was taken in his presence. He has further stated that when he recorded the dying declaration, the deceased was in a position to give the said statement. The statement was recorded in the presence of Police Sub Inspector and a constable. Surprisingly, in the cross-examination, he has stated that when the deceased was brought to him, she was seriously burnt and he did not examine her and he gave her fortwin and calmpose injections. These injections were given intra-muscular. He submitted that because of this injection, the person becomes giddy. He has further stated that the Police Head Constable recorded the dying declaration. The Police Sub Inspector was also present. He has admitted that when dying declaration was being recorded, he was coming and going. He has further stated that intermittently he was going to the patient. He has further added that he was hearing the questions and the answers given by the patient and he could not hear what the patient was telling "word-to-word but he was able to hear what she was telling". He has stated that he has not made any endorsement that she was in a condition to speak but he had denied the suggestion that the patient was talking incoherently or that she was not in a position to speak. He has further stated that he cannot give the name of the constable, who actually wrote the dying declaration. He admitted that PSI Nalavade was there.

14. We may record that we are not happy with the evidence of this witness. First of all, he says that the deceased was serious but he did not examine her. Then he says that he gave fortwin and calmpose injections and they were given intra-muscular. It is not clear as to how long a person would be under the effect of calmpose injection. If the deceased was given calmpose injection, it is doubtful whether her dying declaration could have been recorded thereafter. It appears that when the alleged dying declaration was recorded he was not present there throughout. He has admitted that he was intermittently going to the patient and hearing the answers given by her. He could not hear what she was telling word-to-word but, he heard what she was telling. According to PW-9 PSI Madhukar Nalavade, this dying declaration was recorded by him at 7.30 a.m. In the cross-examination, PSI Nalavade has stated that the deceased was in a position to speak. He asked her as to what had happened and she narrated the story i.e. accused 1 had poured kerosene on her person and set her on fire. While this witness says that he has himself recorded the dying declaration, PW-5 Dr. Prakash Patil in the examination-in-chief has stated that he has recorded the dying declaration but in the cross-examination, he has stated that a constable had recorded the dying declaration. PW-9 PSI Madhukar Nalavade has stated that a constable was present when the dying declaration was recorded. It is not, therefore, clear as to who is the scribe of this dying declaration.

There is no time mentioned on this dying declaration and no endorsement is made by the doctor that the deceased was in a position to make such a statement. Considering the discrepant evidence, we find it difficult to rely on such a dying declaration.

15. The prosecution has also relied upon the dying declaration (Ex-23) recorded by PW-7 Dhanraj Netare. PW-7 Dhanraj Netare says that on 9/12/1987, he had gone to the Civil Hospital, Alibag. According to him, he had recorded the dying declaration of the deceased in which she has stated that her husband had poured kerosene on her body and set her on fire because she could not conceive. He stated that on this dying declaration Dr. Dhabalia has also signed as attesting witness and Dr. Dhabalia had started giving treatment to the deceased. Medical papers show that the deceased was admitted in the hospital at 10.10 a.m. We have already noted her condition as stated by Dr. Dhabalia. She was in a semi-conscious state and her health was deteriorating. Therefore, it is extremely doubtful whether as stated by PW-7 Police Head Constable Dhanraj Netare, her dying declaration could have been recorded. Moreover, absence of time and any endorsement that the deceased was in a fit condition to give such a statement, in the facts of this case, makes it a doubtful document. Moreover, the prosecution has chosen not to examine Dr. Dhabalia though it is very clear that a witness summons was issued to Dr. Dhabalia firstly at the instance of the

prosecution and, thereafter, at the instance of the defence. Dr. Dhabalia came to the court and produced medical papers. The production of medical papers was allowed by the learned judge. We fail to understand why in spite of all this, the prosecution did not examine Dr. Dhabalia. In fact, non examination of Dr. Dhabalia is a serious lacuna in the prosecution case because he is the person who had treated the deceased at the Civil Hospital, Alibag. The learned judge allowed the production of the medical papers and he has stated that he had considered them. The medical papers show that the deceased was semi-conscious and on 9/12/1987 at about 11.00 a.m. Dr. Dhabalia has noted that her general condition as poor, drowsy and he had given her pethidine injection. It is not necessary for us to refer in detail to the medical papers of the subsequent dates but there also we find that the endorsements made by the doctor that the patient was drowsy. It is, therefore, very difficult to hold that the deceased could be in a fit mental and physical condition to make the dying declaration.

16. That takes us to Ex-12, which is the dying declaration recorded by PW-2 Ramesh Nagawekar, Nayab Tahasildar at Alibag. He has stated that at 11.00 a.m. P.C. Netare sent a letter requesting him to record a dying declaration. Accordingly, he went to the Civil Hospital. He asked the deceased the cause for receiving the injuries. She told him that her husband poured

kerosene on her person and set her on fire and that this was done because, she could not conceive. He wrote down her statement in his own hand on a paper. He put his signature thereon. He has stated that the deceased was in a position to give statement. In the cross-examination, he has again reiterated that the deceased was in a position to talk. He has explained away the absence of endorsement of a medical officer on the dying declaration by saying that he was not aware that it was necessary to take the certificate of the Medical officer regarding the condition of the patient. As she was talking, he did not feel it necessary to get such type of certificate. He did not ask the medical officer whether the patient was physically and mentally fit to give the statement. According to this witness, he had reached the hospital at 11.30 a.m. This dying declaration bears the time as 11.30 a.m. We have already noted that there is no endorsement of the doctor on this dying declaration whether the patient was in a condition to give statement. The medical papers show that at 10.10 a.m. when she was admitted, she was semi-conscious. Her blood pressure could not be recorded. Her general condition was very bad. She was given pethadine injection. Again at 11.00 a.m., doctor has noted that her condition was poor and she was drowsy. Therefore, even this dying declaration supposed to have been recorded at 11.30 a.m, becomes doubtful.

17. We may also note that the medical papers show that

the deceased had received burn injuries on her right arm description of which was given as right arm Ant. & Post 9% and left arm Ant. & Post 9%. It is also noted that all extremities were burnt. With this state of the body, it would be doubtful whether the thumb impression of the deceased could be obtained. The post-mortem notes state that against the column "Condition of skin", it is stated "99% deep burns". In such a situation, we have serious doubt whether the deceased's thumb impression could have been taken. **State of Punjab v. Gian Kaur, AIR 1998 SC 2809**, the deceased had received 100% burns. The High Court found the evidence of the doctor not reliable as he failed to satisfactorily explain how thumb impression could be taken when the deceased had 100% burn injuries over her body. The High Court had given benefit of doubt to the accused. The Supreme Court affirmed the view of the High Court. In our opinion, this judgment would be applicable to the present case. Here also, the deceased had 99% deep burns. Therefore, even the thumb impression on the dying declaration becomes suspicious. We have already quoted the relevant paragraph from **Laxman's case (supra)**. We are aware that what the court has to see is that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must see whether the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. It is also true that when the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical

opinion will not prevail and in such a case non certification of the doctor as to the fitness of the mind of the declarant would not invalidate a dying declaration.

18. In this case, on Ex-17, there is no certification of doctor but PW-5 Dr. Prakash Patil has stated in court that the deceased was in a position to make statement. On Ex-23, again there is no certification of the doctor but PW-7 Dhanraj Netare has said that the deceased could speak. On Ex-12, again there is no certification of the doctor but, PW-2 Ramesh Nagawekar has said that the deceased could speak. It is true that the certification of the doctor is not necessary in all the cases. But, the Supreme Court has clarified that each case will have to be decided in its own peculiar facts and circumstances of each case. We do not want to give undue importance to the fact that there is no certification of the doctor on any of the dying declarations. However, we are unable to get the necessary cogent other evidence on record to come to a conclusion that the deceased was in a fit condition to make any of these statements. At the cost of repetition, we again refer to the history given by the members of the deceased's family as "kerosine spread on her body by spreading herself and suicidal tendency". Dr. Dhabalia has noted on the case papers that the burnt areas were on face, on abdomen, all extremities and on the back. It is noted that the deceased had received 99% injuries. At 10.10 a.m. on 9/12/1987, her blood

pressure was not recordable, pulse was very feeble and she was semi-conscious and afebrile. It is also seen in the medical papers that at 11.00 a.m. on 9/12/1987 her general condition was very poor. She was drowsy. She was given pethidine injection. Through out in the medical papers, it is noted that the patient's general condition is poor and drowsy. Dr. Dhabalia, who has made all these endorsements was not examined though pursuant to the summons issued, he had attended the court and produced the medical papers, which have been taken into consideration by the learned trial judge. In these circumstances, we feel that accused 1 must be given benefit of doubt because it could be a case of suicide. There is no cogent evidence on record as regards cruelty. In the circumstances, the order of conviction and sentence of accused 1 Sada @ Sadanand Tukaram Chorge will have to be set aside. Hence, the following order.:

O R D E R

"Appeal is allowed.

The impugned judgment and order dated 21/11/1988 convicting the appellant (original accused 1) Sada @ Sadanand Tukaram Chorge for the offences punishable under sections 302 and 498-A of the IPC is set aside. Accused 1 is acquitted of the

said offences. Consequently, the order sentencing him to suffer imprisonment for life is quashed and set aside. Accused 1 is on bail. His bail bond stands cancelled.

Appeal is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)